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# **‘DESCRIBING & DELINEATING EFFECTS’: COMMENT ON A PAPER BY THOMAS FINEGAN**

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## **‘Describing & Delineating Effects’: Comment on a paper by Thomas Finegan**

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### **Abstract:**

This paper makes some perennially relevant points about the distinction between effects that are intended and effects that are foreseen [i.e. side] effects]; about the way my knowing what I am doing differs from my observing what I am doing; and about the real possibility (not least because of the reality of conditional intentions) of pursuing more than one plan in a single item of behavior. It was delivered as a comment on Dr Thomas Finegan’s unpublished paper ‘Describing and Delineating Effects,’ at a symposium on ‘Double effect’ organized by the Anscombe Bioethics Centre, Oxford, at Blackfriars, Oxford, in July 2016.

I agree with the paper’s fundamental approach, and with the main results of its account of the main kinds of problem-situation it takes up. That is, I agree that

1. one’s actions are essentially and primarily the carrying out of choices (decisions) one makes to adopt and carry out a plan which one<sup>1</sup> has chosen in preference to available alternatives (including doing nothing); that
2. plans are conceptual structures of ends (purposes, aims) and means one judges appropriate to achieving those ends; they concern the real world of causes and effects – effects that one is really *trying* to achieve (whether as ends desired for themselves or as means one judges, however reluctantly, one *needs* for those ends); and they are to be sharply distinguished from every kind of rationalization and apologia that might accompany them; that
3. effects of one’s acts include (to the extent one is successful) the ends one intended and achieved and the means one intended, and was able, to put into effect in pursuit of one’s end or ends, and the side effects of those ends and means – that is, the unintended effects (*effectus praeter intentionem*), effects outside the intention because not included in one’s plan either as ends or as means, even though these side effects may well be effects one foresees as certain, or as probable or possible, not to mention the side effects one did not foresee at all but did in fact cause and bring about; that

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<sup>1</sup> Throughout, this is the English, first-person “one”, to be heard as “I”, not the American, third-person “one”, to be heard as “he or she”.

4. one is morally responsible for side effects that one foresaw or ought to have foreseen, but the moral norms identifying and measuring one's culpability or merit in relation to side-effects are norms distinct and different from the norms that bear upon what one intended (whether as end or as means); and finally I agree that
5. actions are often customarily or moralistically given descriptions that differ from their essential and primary description as what one intends, chooses, and tries to do – extended and philosophically secondary descriptions that include some at least of the side effects (unintended effects) of what one intended, chose and sought to do. So: **going for a walk to keep fit** and **going on foot to one's friend's party** are essential and primary descriptions of two distinct acts, indeed two distinct kinds of act, each carried out by more or less identical behavior; and **wearing down one's shoes** is a further, compatible, but extended and philosophically secondary description of the same behaviour, philosophically secondary even if one fully foresees and accepts that effect.

The formation of plans by deliberation about and between alternatives can be lightning fast (as we know when weighing our words in replying to questions): so someone who falls on a hand-grenade with only three seconds left of its seven-second fuse may be saving his or her colleagues from certain death by taking the force of the blast **or** may be committing suicide in order to escape detection and shameful execution as a spy – two different acts or actions, because although they involve identical behavior they carry out very different plans each (whichever one it was) adopted by choice after very rapid deliberation; in one plan, one's death is a means one chose, an effect one intended; in the other it is an entirely unintended though fully foreseen effect – a side effect -- and one's plan will have fully succeeded even if the grenade turns out to be a dud. Or one may have resolved years ago, and after long deliberation, to take any just and fair means to avoid being asphyxiated by a fireball, and now, this sunny September 11<sup>th</sup>, an oily fireball is ripping through one's large open-plan office so one jumps out the window – and this is not suicide, not *trying to kill oneself* or *deliberately killing oneself* -- even though one is (and knows one is) on the 105<sup>th</sup> floor of the World Trade Center; given one's longstanding intention, it is not only the very

same behavior but also essentially and primarily the very same action as jumping out of the 2<sup>nd</sup> floor (English first-floor) window to escape the fireball.

These are not actions that Dr Finegan considers but my account of them shows why I agree with his main conclusions about his major examples, such as the fat man being blown out of the cave entrance by his colleagues to save themselves from certain death; or the craniotomy performed not as a partial birth abortion (in which the baby's death is desired as a means of relieving the mother of the shame or expense of having a baby) but as head-narrowing as the only way to extract the baby from the birth canal in time to save the mother from death from the stress that the obstruction of her birth canal is imposing on her mortal frame.<sup>2</sup>

Thomas Finegan's paper is entitled "Describing and delineating effects". The "delineating" is between intended and unintended effects, and then, among the latter, between foreseen and unforeseen, and between foreseeable and unforeseeable (where foreseeability will often bear on the culpability of the unforeseen). I doubt if effects have other principled delineations besides these. For as (or: considered just as) the effects of causes, and as themselves causes of further effects, they ripple out to the end of the ages.

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<sup>2</sup> At the symposium, Luke Gormally objected forcefully that this craniotomy simply cannot be regarded as other than intentional killing. For crushing and emptying the baby's skull *constitutes* killing it; no-one has ever survived such destruction of their bodily constitution. The short response is that the surgeon's act in effecting this craniotomy simply cannot be regarded as *trying to kill* the baby; so it cannot be intending or intended to kill, or killing with intent to kill. (I avoid the word "intentional" when I can, since in idiomatic English it extends to side effects.) It is intended head-narrowing or compressing, with the shocking and immediate and of course foreseen result that the baby dies ("is killed"). This result is not "constitutive of" the act, but is a (immediate and drastic) side effect; nothing is constitutive of human acts as human acts save what is intended as end or as means. Whether the imposition of so drastic a side-effect is justified is a further question, the answer to which is measured by the norms of justice that the Church from its earliest years has proclaimed. On the precise content of what the Church has and has not taught about craniotomy (and also on all the matters discussed at the symposium), see my essay (with Grisez and Boyle), "'Direct' and 'Indirect' in Action", essay 13 in my *Intention and Identity* (OUP 2011); see also essay 10 in the same volume for my critique of Anscombe's moral-analytical discussion of cases similar to the blocked cave case. On all these matters see the strong critiques directed at my views by Luke Gormally and by Fr Kevin Flannery SJ, in Robert George and John Keown, *Reason, Morality and Law: The Philosophy of John Finnis* (OUP, 2013), and my replies to them at pp. 480-98. (See also the essay in that volume by Cristóbal Orrego and my reply at pp. 498-502.) On these matters, moral *intuitions* are not to be trusted very much, not least when following them entails the surgeon standing by during the appalling death of the mother he could have saved and of the baby whose death is imminent whether he operates or not – an implication not often held steadily in view in the presentation of intuitions about craniotomy.

As for “describing”: I too have often written about the description of actions,<sup>3</sup> and indeed of acting under a description, the idea which Finegan rightly gives prominence in his opening quotation from Anscombe’s *Intention*, the work of hers with which all my own work on intention and action is, I believe and have argued in debate with well informed critics,<sup>4</sup> fully in line:

Since a single action can have many different descriptions, e.g. ‘sawing a plank’, ‘sawing oak’, ‘sawing one of Smith’s planks’, ‘making a squeaky noise with the saw’, ‘making a great deal of sawdust’ and so on and so on, it is important to notice that a man may know that he is doing a thing under one description, and not under another ... So to say that a man knows he is doing X is to give a description of what he is doing *under which* he knows it.<sup>5</sup>

Immediately after that quotation Finegan says: “It is a thesis of this paper that the relative failure of philosophers to shine more light on the centrality of description to understanding action is responsible for much of the confusion evident in contemporary action theory.” I think that is correct, but only if we understand just **how** description is involved in accurately understanding action. For one could equally well say that it is by giving centrality to description rather than to deliberative, practical understanding that most contemporary action theorists confuse themselves. To understand and get the force of Finegan’s thesis here, it is necessary to go forward to p. 6 of his paper, where (about line 10) he provides the necessary interpretation of it by referring to the “precise way proposals, plans, and benefits appear worthwhile **to the relevant first person perspective**, and how *this* perspective generates the descriptions that accurately characterise

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<sup>3</sup> For example: “shaping of description(s) in practical reasoning and deliberation is not a matter of finding a description under which the behaviour one is determined to carry out will be acceptable to oneself or others. Rather, it is settled by what one considers a necessary or helpful means to achieving an objective (usually a nested set of objectives) that one considers desirable, in view of the factual context as one understands its bearing on both one’s end(s) and the means that one judges serviceable for achieving such end(s)”: *Intention and Identity* (OUP, 2011) at 76. See also at 189-91: “the desirability characterization under which one wills the end and the description under which one judges one’s chosen means appropriate to that end.” Also 257, 268, quoted in my response to Gormally in *Reason, Morality and Law*, 483 at n. 86.

<sup>4</sup> See most recently the debate between Luke Gormally (formerly Director of the Linacre [now Anscombe] Centre and latterly co-editor of a valuable series of Anscombe papers, most unpublished until now) and me in George and Keown, *Reason, Morality and Law*, n. 2 above. For my criticisms of Anscombe’s moral writings on double effect, see my reply in that volume and my “Intention and Side Effects”, essay 10 (1991) in my *Intention and Identity*.

<sup>5</sup> G.E.M. Anscombe, *Intention*, 2nd ed. (Cambridge, Mass; London, England: Harvard University Press, 2000). 11-12.

what exactly is intended in any plan of action.” A description of an action is entitled to be central to the understanding of the action and/or of intention and/or of effects if and only if it is a description from the first-person perspective, that is, is a description entailed by the understanding that one has of one’s own plan of action as one shapes that plan in deliberation, chooses it, and is putting it into effect. The danger of talking about **description** (in this sort of context) is that, even in one’s own thought (by definition first-person thought) – let alone in the thought and speech of third persons -- descriptions of behaviour can become detached from that deliberative understanding and thereby include in the description elements in or effects of that behavior that are no part of the plan, no part of one’s intentions, and not included in what one knew one was doing as one did it.

The sort of **knowledge of what one is doing** that Anscombe spoke of in that quoted passage from *Intention* is, as she stresses, not knowledge by observation – and in that sense it is *not* descriptive knowledge but practical knowledge. I know what I am doing, not because I am peeking at myself out of the corner of my mind’s eye (though that is, with some difficulty, possible), but because this is what I *mean* to be doing – what I have chosen and do intend.<sup>6</sup> If we are to speak of description here, it is paradigmatically the sort of running commentary one might provide like this: “Now (according to my chosen plan) I need to turn out of Beaumont Street into St Giles” “What are you doing?” “I’m getting to Blackfriars by turning left out of Beaumont Street”. As Finegan says (p. 7), effects should “be described practically, and neither naturalistically nor moralistically”, especially “in bioethical matters” but also, I would add, in biographical and historical matters, and before that, in the to and fro of social life as one person engaging and interacting with others. On the same page he rightly says “accurate descriptions of intentions will focus on effects **as they appear practically interesting**”, though I think it is essential to understand: “appear practically interesting **to the person whose interest** in (and resulting purpose of) bringing them about is what is bringing or has brought them about”.

We can usefully sharpen up Anscombe’s accurate talk of **knowing what one is doing**. We can do so by saying (assuming always good mental health):

6A. As one acts (does something), one has infallible understanding, infallible knowledge, of what one is doing.

But then we should add:

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<sup>6</sup> On this sort of knowledge, and its rediscovery in the 1950s (most clearly by Anscombe, see my “On Hart’s Ways...”, essay 10 (2007) in my *Philosophy of Law* (OUP, 2011).

6B. One may obscure from oneself this knowledge by more or less ingenious rationalizations that dress up one's situation, one's interests and desires, and one's practical reasoning with that kind of more or less account that we call rationalizing, telling oneself (and often also, of course, others) a story about about one's intentions; but conscience and self-awareness can and should be aware of the rationalizing and its inauthenticity as measures by one's knowledge of what one really intends;<sup>7</sup> and

6C Even when no rationalizations obscure or overlie one's infallible knowledge of what one is doing at present, still, at any time (even a moment) and 6C later, one may through forgetfulness be mistaken about what one was doing, and so may honestly misdescribe it to oneself (say in retrospective conscience) or to others.

And both 6A and 6B and C can be supplemented by what the Anscombe quotation also stated: "a man may know that he is doing a thing under one description, and not under another" – that is to say:

6D. One can be unaware, ignorant, of some of the **true** descriptions of what one is doing. But *these* are descriptions which, though true, are not "from the first-person perspective". They do not provide the essential and primary proper description(s) of the act or its effects; they are not of the act *as* an intentional act or, more exactly, *as* the carrying out of an intention and choice.

I think it follows from the truth of 6A (infallibility of knowledge of what one is doing) that one can give a true and essential, primary description of one's action and of what it intends to bring about (in that sense, of its intended effects), **without having any knowledge** of intention-analytical theories of, say, "intention holism" or any knowledge of "tests, rules and norms" such as those proposed and discussed in Finegan's paper. So I approach each and all of these tests, rules or norms of description with an antecedent skepticism about their utility and indeed about their warrant.

And at least one of them, I think, is definitely mistaken. The rest of my commentary is all about this proposed test or rule.

On pp. 16-17, the paper says that, to distinguish between effects as intended and effects as foreseen but not intended (and incidentally I don't think that talk of someone *un-intending* X

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<sup>7</sup> I have added 6B since the symposium, in response to helpful observations of Prof. David Albert Jones. For my account of rationalization, see e.g. my *Aquinas: Moral, Political and Legal Theory* (OUP, 1998), Index s.v. rationalization.

is a gain to English or to clear thinking, any more than talk of *un-expecting* or *un-foreseeing* would be), we need --

a simple test to ascertain that there really are two (or more) effects) at issue which if one were to be intended would render the others as side-effects. The test is this: do the alternative effect descriptions differ in a significant respect from the point of view of practical reason...in the given context?

Now this harks back, I think, to the discussion on pp. 8 and 10 of termination of ectopic pregnancy by “use of methotrexate or via a salpingostomy” (p. 8) so that the “embryo is intentionally unblocked from a fallopian tube” (p. 8), a procedure which (Finegan argues) cannot (logically cannot) intend the death of the child:

[p. 8] a first person analysis of the case in question reveals that there is simply no practical space for the embryo’s death to be intended: the procedure’s end is to save the mother’s life, the means to this end is the unblocking of the embryo (not the embryo’s death), and the means to this preliminary end is the use of methotrexate or via a salpingostomy (not the embryo’s death). The embryo’s death is no means at all here. With the current state of medicine neither can the embryo’s death be intended from the perspective of an intersecting plan of action of the agent’s: it will be brought about anyway through the saving of the mother’s life, and one cannot intend an effect via a plan of action that will be brought about externally to the plan and regardless of it.

Again:

[p. 10] it is not (and cannot currently be) intentional killing because the step in the plan of action that could theoretically be described as “killing” has in actual fact the practical description of “unblocking”. “Killing” and “unblocking” are distinct enough acts to play different roles for practical reason and it is the latter description that fits into the intentional plan outlined above. Since the *one* plan of action cannot contain a step that has two distinct, separate practical meanings<sup>8</sup> – because two practical meanings entail two practical descriptions, which themselves entail two distinct intentions, and which themselves entail two ends formative of two plans – “killing” has no intentional role in the plan to save the mother’s life. And since (currently) the death of the embryo

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<sup>8</sup> “Two distinct, separate practical meanings” is not the same as complex conjunctive or disjunctive intentions (see Section I).



necessarily will be brought about anyway by this plan as a side-effect (regardless of any other act), no intersecting plan of action can intend the killing as a means.

And on p. 11, now referring to craniotomy done to save the mother in labour from the death that will otherwise soon be caused by the baby's blocking her birth canal, Finegan says:

what is happening here is that the effect that is genuinely intended under the description material for the relevant plan, "narrowing the head", is moralistically inflated with an effect that **cannot** be co-intended in the same plan of action, "harming".

Now I accept that an effect cannot be "co-intended in the same plan of action" but I do not accept that an effect which in one plan of action is an inevitable side effect cannot also be an intended effect in an intersecting plan of action simultaneously pursued in one and the same course of behavior. Finegan tries to justify this "rule" and the resulting test(s) by the examples (a) of switching on the light to read which (he thinks) cannot co-exist with switching on the light to heat the room and (b) of running to keep fit and running to wear out one's shoes so as to be able to justify purchasing a new pair. The welcome side effects of heating the room and wearing out the shoes can be "motivating" but cannot, he thinks, be intended unless this motivating "has an impact on" or in some way "controls one's actions (or forbearances)" (p. 9).

The distinction between (a) being motivated by the prospect of effecting X and (b) intending to effect X eludes me. And, be that as it may, I think that one can have simultaneously, and be acting pursuant to, two essentially different plans of action, plan P and plan Q. That is, it can be the case that one cannot oneself (still less can others) rightly say that one is pursuing P rather than Q, or Q rather than P. For the conditions under which one plan would call for certain behavior (or forbearance) while the other plan would not may well happen not to materialize (obtain/exist). So, whenever I discuss with my Aquinas students the original exposition of "double effect", Aquinas's discussion in *ST* II-II q. 64 a. 7, of killing in private self-defence (killing which, as he says, may never rightly be intended), I always point out that someone so situated that he can rightly use **lethal** proportionate force against the attacker in self-defence might opportunistically (though wickedly) conceive and adopt the purpose and plan of taking this occasion for carrying out his long-meditated desire to get revenge on this same attacker by killing him in circumstances where his vengeful purpose will be undetectable to bystanders ("witnesses"). The fact that in the circumstances he simply does not have to choose between plan P (acting in justified self-defence) and plan Q (carrying out a revenge killing) does

not of course excuse his choice to act in pursuance of plan Q even though, in and through the same piece or course of behavior, he is also choosing to act pursuant to plan P.

I would add – though I don’t know whether this helps, that Finegan’s denial that two plans can be simultaneously carried out with one and the same inevitable effect overlooks the reality of conditional intentions.<sup>9</sup> These are real intentions resulting from real choices to do or cause X if and only if certain conditions obtain – and the reality of such intentions is not defeated by the non-obtaining (nonexistence) of those conditions for even a long time. So (to take or adapt from Finegan’s paper this rather special case of conditional intention) I can switch on the light intending both to read and to warm the space around the library desk, intending to keep it on **even if** I finish reading and start listening to my iPod. And these are two distinct intentions in two distinct, intersecting plans of action, intentions carried out in one piece of behaviour, and each a real intent -- even when it does not actually happen that I finish the assignment in time to stop reading and start just listening to music. The choice made in the second plan, to switch on the light for its heating effect, *includes* a conditional intention: to keep the light on for its warming effect **even if** I’ve stopped reading, and the condition may well happen not to obtain, and so **in that sense** the choice and intention has no “impact” on or “control” over my behavior, though it remains the case that the intent to warm **was shaping** my light-switching behavior on plan Q (of warming for comfort) even while the same behavior was being shaped by plan P (of illuminating for reading). The same sort of analysis goes through with the runner who runs for fitness (plan P) and then also (plan Q) for the sake of wearing down the shoes to justify to her parents their buying her a new pair. Though, when she adopts plan Q she *might* change her running pattern to wear down the shoes faster, she doesn’t have to – it can still be the case that she is pursuing two plans, in one of which wear is merely a side effect while in the other it is a means. And, to go all the way back to my example of falling on a hand-grenade to shield one’s fellows: it may also happen to be an opportunistic act of suicide chosen so as to escape imminent detection as an enemy spy.

So there is no rule or norm to guarantee that terminating an ectopic pregnancy or carrying out a craniotomy is not for a bad intention. Yet it can be the case, with each procedure, that it does not involve any wrongful intent, any intent to kill or cause harm. The acting person can infallibly know, and no one else can so securely know, that that is the case. But maintaining

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<sup>9</sup> On these see my “Conditional and Preparatory Intentions” (1994) in my *Intention and Identity*.

purity of intention and avoidance of mixed motives is often difficult where the side effect is also at least in some respects a welcome one, as with civilian deaths which demoralize the enemy whose munitions factory one is justifiably bombing with civilian casualties as a certain and foreseen side-effect. I think one cannot say one is following **only** the justified plan P unless its side-effects, though welcome, do not *motivate* one at all.